CHARLES McCLOUD
v.
ACTING ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-103-A Decided March 18, 1992

Appeal from denial of an application to modify a U.S. Direct Loan.

Vacated and remanded.

1. Administrative Procedure: Administrative Record--Bureau of Indian Affairs: Administrative Appeals: Discretionary Decisions--Indians: Financial Matters: Financial Assistance

When the Bureau of Indian Affairs denies an application for a U.S. Direct Loan, the administrative record and the decision, when read together, must show how the Bureau reached its conclusions.

APPEARANCES: Leo Broden, Esq., Devils Lake, North Dakota, for appellant; Jerry Jaeger, Aberdeen Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Charles McCloud seeks review of a May 15, 1991, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (BIA; Area Director), denying an application to modify appellant's U.S. Direct Loan. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision and remands this matter to the Area Director for further consideration.

Background

Appellant operates a farming enterprise on allotted trust lands on the Turtle Mountain Reservation, North Dakota. Appellant apparently also operates, or has previously operated, a trucking and/or construction enterprise. On April 27, 1978, appellant received a U.S. Direct Loan through BIA in the amount of $30,000. This loan was increased to $100,000 through an additional loan received on June 27, 1978. The administrative record states that this loan has been delinquent for many years, and that appellant also owes the Farmers Home Administration (FmHA) approximately $572,400, for which, as of April 1991, FmHA had made a settlement offer of $223,988.

Appellant indicates that much of his problem repaying loans arose because of losses resulting from projects undertaken as a minority and/or Indian preference contractor on the Turtle Mountain Reservation. He states that because he was unable to recoup losses sustained on these projects, he used profits from his farming operation to complete the projects, with the result that he was unable to repay farm loans and his credit rating was severely damaged.

Subsequent to his 1978 loans, appellant submitted at least one additional application for a direct loan. If approved, that loan would, in essence, have constituted a restructuring of his debt, and would have paid off most, if not all, creditors other than BIA. By letter dated November 22, 1989, the Area Director approved the application contingent upon appellant's meeting certain conditions. However, after reviewing a title opinion relating to appellant's property, the Area Director revoked the loan approval and declared appellant's existing direct loan to be in default. The revocation letter indicated that certain outstanding judgments, unpaid property taxes, and a Uniform Commercial Code filing against certain of appellant's property by a bank had not been reported in the loan application. The letter indicated that BIA's perception of appellant's financial position was substantially altered by these additional factors.

Appellant continued his efforts to resolve his financial problems in a way that would prevent bankruptcy proceedings. One major aspect of this effort involved obtaining the consent of his judgment creditors to a payment of 7 percent on their judgments.

Appellant resubmitted his loan application on April 18, 1991. This application sought a total of $298,975, including $224,000 to pay off FmHA, and $74,975 for annual operating costs for crops and livestock. By memorandum dated May 7, 1991, appellant's application was forwarded to the Area Director by the Superintendent, Turtle Mountain Agency, BIA. The memorandum stated that appellant indicated he had made arrangements to satisfy all of the judgments set out in the title opinion.

By letter dated May 15, 1991, the Area Director denied the application, stating:

> Bureau of Indian Affairs policy states that any applicant having unresolved, delinquent or defaulted Bureau debt obligations will be ineligible to receive additional credit from the Indian Financing Act Program. In addition, your present loan has been declared in default and has been referred to the Office of the Field Solicitor for initiation of foreclosure proceedings by the United States Attorney. [1/] We will, therefore, consider no further credit applications from you until your present loan obligation has been resolved or paid in full.

1/ The Board has been informed by the Twin Cities, Minnesota, Field Solicitor's Office that foreclosure proceedings have not yet been initiated.

The Board received appellant's notice of appeal from this decision on June 10, 1991. Briefs were filed by appellant and the Area Director.

Discussion and Conclusions

Appellant sought his loan under the provisions of Title I of the Indian Financing Act, 25 U.S.C. §§ 1461-1469 (1988). The Board has consistently held that BIA's decision of whether or not to approve a loan under this program is discretionary, and that it will not substitute its judgment for BIA's. However, the Board has unrestricted review authority over questions concerning whether BIA properly considered all legal prerequisites to the exercise of its discretion. See, e.g., Power Fuel Producers, Inc. v. Acting Anadarko Area Director, 20 IBIA 190, 191 (1991), and cases cited therein.

Appellant challenges the Area Director's conclusion that he was not eligible for a loan because he had unresolved, delinquent, or defaulted debt obligations to BIA. This contention constitutes a legal challenge to the basis for the Area Director's decision, which is within the Board's unrestricted review authority.

The Area Director did not cite specific authority for his conclusion that appellant was not eligible for a loan, stating only the it was BIA policy. Appellant states that the conclusion was based upon a December 7, 1990, memorandum from the Assistant Secretary - Indian Affairs to all BIA Area Directors concerning "FY 1991 Management Initiatives and Policies, Indian Financing Act Programs (IFA)." The Area Director did not dispute appellant's statement. The Board has not found this limitation in the regulations governing the direct loan aspect of the Indian Financing Act Program, located in 25 CFR Part 101.

The December 1990 memorandum first sets forth general management and policy initiatives for the entire Indian Financing Act Program. It states at page 1: "Applicants having any unresolved, delinquent or defaulted Bureau debt obligations will be ineligible to receive an IFA loan or grant according to Department of Treasury guidelines." Appellant states that he was not only aware of this limitation, but specifically brought the memorandum to the Area Director's attention. The reason appellant raised the memorandum was because it further provides at page 5 that "[n]o loan shall be made to an applicant who has a delinquent or defaulted Bureau loan, except for loan workout situations." The quotation from page 5 relates to the direct loan aspect of the Indian Financing Act Program. 2/ Appellant contends that he was in a "loan workout situation," and that he therefore met the eligibility requirements.

2/ The phrase "except for loan workout situations" appears only in the portion of the memorandum concerning the direct loan program. The corresponding provision in the portion concerning the Indian Business Development Program provides only that "[n]o grants shall be made to an applicant who has a delinquent or defaulted Bureau loan." See Memorandum at 4.

The memorandum does not define "loan workout situation." Neither is the phrase defined in the regulations in 25 CFR Part 101. The Area Director does not discuss it in the administrative record, his decision, or his answer brief. On its face, however, the phrase would appear to cover appellant's situation, making him eligible for consideration for a loan.

[1] In S & H Concrete Construction, Inc. v. Acting Phoenix Area Director, 19 IBIA 69, 71 (1990), the Board held:

> The decision and the administrative record for an appeal, read together, should be sufficient to show how BIA reached its conclusion. Further, where a requirement is stated * * * which does not appear in the regulations governing the program, an explanation of the source of the requirement should appear in the record.
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> Where the administrative record does not support BIA's decision, the case must be remanded for development of an adequate record. Plain Feather v. Acting Billings Area Director, 18 IBIA 26 (1989). This is true even where the decision is based on the exercise of discretion. Ross v. Acting Muskogee Area Director, 18 IBIA 31 (1989). [Footnote omitted.]

See also Reed v. Minneapolis Area Director, 19 IBIA 249 (1991).

The administrative record and decision in this case do not show how the Area Director reached his conclusion. Neither do they show that he considered the statement on page 5 of the December 1990 memorandum, even though appellant specifically raised this issue. Under these circumstances, the Board cannot hold that the Area Director's decision is adequately supported by the record.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Aberdeen Area Director's decision of May 15, 1991, is vacated, and this matter is remanded for further consideration in accordance with this opinion.

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Kathryn A. Lynn
Chief Administrative Judge

I concur:

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Anita Vogt
Administrative Judge